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In The

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 731

ALABAMA STATE TEACHERS ASSOCIATION, et al.,
Appellants,

vs.

ALABAMA PUBLIC SCHOOL AND COLLEGE AUTHORITY, et al.,
Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MOTION TO AFFIRM

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Authority and Individual Members.

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Appellees, Alabama Public School and College Authority, a Corporation; Albert P. Brewer, individually and as President of the Authority; Ernest Stone, individually and as Vice President of the Authority; Robert B. Ingram, individually and as Secretary of the Authority; and Agnes Baggett, individually and as Treasurer of the Authority, move that the final Judgment and Decree of the three-judge District Court be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument, and on the further ground that the judgment and decree are correct.

STATEMENT OF THE CASE

The Alabama Legislature authorized the Alabama Public School and College Authority to issue and sell bonds in the principal amount of $5,000,000. Act No. 403, General Acts of Alabama 1967, page 1016.

By Section 2 of the Act the net proceeds of the sale of the bonds "shall be distributed to Auburn University to be used by the Board of Trustees thereof for construction and equipment of physical facilities for conducting a four-year college or branch of the University in the City of Montgomery and for the support and maintenance of such college for each of the fiscal years ending September 30, 1968, and September 30, 1969."

Appellants sought a declaratory judgment that Act No. 403 of the 1967 Legislature is unconstitutional and also prayed for injunctive relief against the enforcement, operation, and execution of the Act. A three-judge court was convened to hear the cause pursuant to 28 U.S.C., Sections 2281, and 2284.

It is contended by appellants that the Act in its application perpetuates segregation by establishing an extension or branch of the University in Montgomery, Alabama.

In an amendment to the complaint, appellants also claim that if any new institution of higher learning is to be situated in or near Montgomery that it should be under the supervision and control of Alabama State College, a predominantly Negro institution specializing in "Teacher Education."

The opinion in this case was written for the three-judge Court by District Judge Frank M. Johnson, Jr., and concurred in by Circuit Judge Walter P. Gewin and District Judge Virgil Pittman. Act No. 403 was declared not to be unconstitutional on its face or as applied.

This appeal followed and appellants jurisdictional statement has been filed.

ARGUMENT

Under "Questions Presented" in the jurisdictional statement, the first is "Does the State have an affirmative duty

to disestablish a dual system of higher education based upon race?"

The answer to this question is stated in the present opinion, as follows:

> "The law is clear also that the State is under an affirmative duty to dismantle the dual system. Indeed, in *Lee vs. Macon County Board of Education*, supra, we required the state colleges and junior colleges to refrain from discrimination in admissions and to begin faculty desegregation."

As to appellants' contention that the reason for having the extension in Montgomery was to provide for white students in the area, the court said, "To the extent that this may mean to provide for white students only, the record does not bear them out."

The second and last question presented by appellants is stated as follows:

> "Where the record shows that the proposed construction by a predominantly white university of a college in Montgomery duplicating an existing, virtually all-Negro college, was planned without regard to its effect upon the disestablishment of the dual system, was it proper for the court to deny injunctive relief?"

In the first place, it is erroneous to assume "duplication."

Dr. Watkins, President of Alabama State College, testified that his institution "specializes in Teacher Education."

Dr. Philpott, President of Auburn, observed that Auburn has a wide range of programs and faculty resources, and that Alabama State College did not have the range of programs that Auburn has. An illustration was that in business ad-

ministration courses, an important area at Auburn was computer science (p. 36, Dr. Philpitt's deposition).

Secondly, Auburn University is an integrated institution both as to students and faculty (pp. 12, 14, Dr. Philpott's deposition).

It is our belief that the location of the extension of Auburn in Montgomery will from the evidence presented result in greater Negro attendance and increased Negro faculty employment at Auburn.

Negroes are now attending several predominantly white schools away from Montgomery; for instance, Alexander City State Junior College, located at Alexander City, Alabama. Although Montgomery County is not supposed to be in that school's geographic area, 12 Negro students from the Montgomery area are attending that Junior College. As to this, the District Court said:

> "However, it is noted that 12 of these 137 students are Negroes, and there is nothing in the record now before this Court to indicate that these Negroes, if they so desire, will not be absorbed into the new Auburn branch in Montgomery along with other Negroes and whites."

Then concluding, the court said:

> "We believe that an effective beginning has been made at Auburn to dismantle the racial characteristics of that school system and that, as effective desegregation plans are developed in the elementary and secondary public schools, the problem will probably resolve itself in the case of higher education. If the Auburn branch at Montgomery is administered as 'just a school,' as we are assured it will be, and we are confident it will be, our conclusions as herein outlined will receive significant confirmation."

CONCLUSION

As to expanding Alabama State College as an alternative to establishing the Auburn branch, Alabama State is at least as identifiably "black" as Auburn is identifiably "white." As said by the court, "In terms of eliminating the dual school system, one label is no more preferable than the other."

There are no substantial questions presented for this court's consideration; the case was carefully considered and correctly decided in the court below.

Needed higher education facilities for both Negroes and whites should no longer be delayed.

It is respectfully submitted that the judgment and decree should be affirmed.

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CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of the Supreme Court of the United States, hereby certifies that a copy of the foregoing Motion to Affirm has been served upon the following attorneys for appellants by mailing a copy thereof

to each, postage prepaid and airmail where proper, on this the 7th day of November, 1968:

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